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Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536

JUL 31 2003

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:


INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as director of its spiritual program. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a director of the church's spiritual program immediately preceding the filing date of the petition.

On appeal, the petitioner submits copies of documentation intended to establish that the petitioner has paid the beneficiary's salary, thereby inferring that the beneficiary worked for the petitioner.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious

denomination which has a bona fide nonprofit religious organization in the United States.” The regulation indicates that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.”

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on April 25, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as director of the petitioner’s spiritual program throughout the two-year period immediately preceding that date.

Two church ministers [REDACTED] and [REDACTED] state in a joint letter that the beneficiary “was employed by [the petitioning] Church from 4/2/1998 to 4/2/2001 as Director of Spiritual Program. He was employed on a full time basis and received a salary of US \$20,000.00.”

The petitioner submits newsletters dated 1999 and 2000. Counsel indicates that these have been submitted to show “the work of the Petitioner.” The beneficiary’s name does not appear in these materials, and therefore the documents are not contemporaneous evidence of the beneficiary’s claimed employment.

The petitioner submits copies of three certificates issued to the beneficiary. One reads:

Hisportic Christian Mission
East Providence, Rhode Island
Hereby Certifies that
[The beneficiary]
Has Satisfactorily Completed the Requirements of the
Christian Leaders in Action Course
October 16, 1999

The second certificate reads:

Certificate of
Appreciation
This Award is Presented to

[The beneficiary]
In Appreciation of Services For
Deacon
From January 1, 1999 to December 31, 1999
Presented at The [petitioning] Church
This 31 Day of December, 1999

The final certificate reads:

Certificate of
RECOGNITION
Awarded To
[The beneficiary]
In Recognition Of
Serving God as Vice-President of the [petitioning] Church
Dated this 13 day of January 2001

Underlined portions denote handwritten additions to the certificates. The above certificates are the only documents of record that purport to originate from during the two-year qualifying period.

The director instructed the petitioner to submit further evidence of the beneficiary's qualifications and past employment, among other evidence. In response, Pastor [REDACTED] states that the petitioner holds a "Bachelor in Theology – First Level" from Shalom Biblical Seminary. Although Shalom Biblical Seminary is located in Mount Vernon, New York, the documentation from that seminary is in Portuguese rather than in English and the petitioner has provided no translation. The document clearly refers to the 2000/2001 academic year, and bears the date "23 de Juhno de 2001" which appears to be June 23, 2001. If this degree is a basic qualification for the position, then it is not clear how the beneficiary could have qualified for the position as early as April 1998 as claimed. The petitioner has also submitted copies of additional certificates dated 2000 and 2001, some in English and some in Portuguese.

The director had raised questions regarding the petitioner's ability to pay the beneficiary's proffered salary of \$20,000 per year. This issue did not resurface in the director's decision, but the petitioner's earlier submissions in this regard are highly relevant to the matter at hand.

8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent

residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The only financial information included in the initial submission was an unaudited financial statement, which is not one of the acceptable forms of evidence listed above. The director therefore requested additional evidence. The petitioner submitted a bank statement for the quarter ending December 31, 2001, showing a \$163,841.78 balance in a deposit account.

The petitioner also submitted documents, entitled "Summary of Actual Categories" for calendar years 2000 and 2001. The 2000 document shows a net inflow of \$8,399.23 after expenses; in 2001, the church showed a net outflow of \$3,176.16. Other information on these summaries is of direct relevance to the issue of the beneficiary's claimed employment. As noted above, [REDACTED] and [REDACTED] had previously claimed that the beneficiary worked "from 4/2/1998 to 4/2/2001 . . . and received a salary of US \$20,000.00." The summaries, which purport to be complete lists of the petitioner's expenditures and deposits throughout 2000 and 2001, list only the following payments of \$10,000 or more:

| | <u>2000</u> | <u>2001</u> |
|-------------------------|--|-------------|
| Benevolence | \$19,604.21 | \$18,274.16 |
| Church Development Fund | 74,103.00 | 15,000.00 |
| Music & Singers | 10,036.87 (exceeded \$10,000 in 2000 only) | 4,913.48 |
| Pr [REDACTED] Salary | 27,996.71 | 27,996.00 |
| Rent & Upkeep | 28,415.95 | 33,176.36 |

The dozens of other payments listed on the summaries are less than \$10,000, and all are itemized. None of the itemized listings plausibly relate to the salary of a director of a spiritual program. The 2000 summary also includes salaries paid to four other individuals, two of whom earned \$500 and two of whom earned \$200. The 2001 summary lists only Pastor [REDACTED] salary. Thus, even though the above documents clearly take into account several salaries, there is no mention of the \$20,000 purportedly paid to the beneficiary in 2000 and 2001. "Budget/Expense Comparison Reports," also for calendar years 2000 and 2001, indicates that the church had budgeted \$500 each for two salaries in both 2000 and 2001, but those two salaries were paid only in 2000. Again, there is no mention of the beneficiary by name or by title, nor do the budgets show the beneficiary's claimed \$20,000 salary.

The petitioner has also submitted its projected budget for calendar year 2002, dated January 8, 2002. Once again, the budget mentions several salaries but nothing for the beneficiary. The phrase "spiritual programs," of which the beneficiary has supposedly been the director since 1998, appears on none of the financial documents. The beneficiary's salary payments do not appear in the petitioner's budget or in its itemized accounting of expenses, and the petitioner has not identified any alternative source for its alleged regular salary payments to the beneficiary.

A list of the congregation's members, dated April 3, 2002, shows the beneficiary's name but the beneficiary's membership in the congregation is not the issue in this matter.

The petitioner has also submitted a letter, also dated April 3, 2002 and signed by Pastor Divino, the body of which reads in its entirety:

List of the Religious and Non-Religious Employees of the Church:

| | | |
|------------|--------------------------------|-----------|
| ██████████ | Senior Minister | 28,000.00 |
| ██████████ | Worship Minister and Secretary | 20,000.00 |

Pastor ██████████ does not explain the absence of the beneficiary's name from this very short list, although the omission of the beneficiary's name is entirely consistent with earlier financial documents which fail to show that the beneficiary drew any salary at any time.

The director denied the petition, citing the absence of evidence that the beneficiary ever worked for the petitioner. The director specifically noted the absence of tax returns reflecting the beneficiary's salary.

On appeal, the petitioner submits yet another letter from Pastor ██████████ indicating that the beneficiary "has been employed from April 2, 1998 . . . and receives an annual salary of US \$20,000.00." Pastor ██████████ makes no mention of his April 3, 2002 letter which conspicuously omitted the beneficiary from a list of only two employees.

Counsel states that the beneficiary "has now filed his US Income Taxes for the years 2000 and 2001." The petitioner submits copies of these tax returns, stamped as received by the Internal Revenue Service on September 27, 2002. The copies are incomplete, showing only the first page of each return. The beneficiary claimed no income from wages or salaries in either year. Instead, he claimed business income for both years, \$21,120 in 2000 and \$22,100 in 2001. The petitioner did not submit Schedule C which might have identified the business that provided this income. The petitioner also failed to submit the last page of the tax return, on which the taxpayer is required to identify his or her occupation. Furthermore, these are joint returns filed by the beneficiary and his spouse, and thus the income claimed could have been earned entirely by the beneficiary's spouse.

All of the above deficiencies aside, it remains that these tax returns were not timely filed. The beneficiary did not file these returns until late September 2002, after the petition had been not only filed but also denied. These incomplete tax returns, devoid of supporting documentation, do not represent contemporaneous evidence of employment in 2000 or 2001. Instead, they represent documents that were newly created after the denial of the petition, for the specific purpose of creating evidence to overcome that denial. The director, in noting the absence of tax returns, was not implying that the petitioner could resolve this issue simply by having the beneficiary pay his back taxes. Rather, the director was noting the absence of contemporaneous documentation. New tax returns neither address nor resolve this deficiency.

Counsel states:

Enclosed please find copies of checks issued by [the petitioner] as proof of payment of wages to [the beneficiary] for the most recent pay periods. Pastor [REDACTED] informs us that copies of checks to cover the two year period in question were unavailable, but we trust that the copies of the checks submitted will suffice as proof that a pattern of payment has been established by the church.

The petitioner submits copies of five checks, all dated at weekly intervals between September 15 and October 24, 2002. Each check is for \$500. (Weekly checks for \$500 each would total \$26,000 annually, rather than \$20,000.) There is no evidence that any of these new checks were cashed. The checks do not in any way establish "a pattern of payment" during the 1999-2001 qualifying period. The only patterns evident in the record are a series of inconsistent statements by Pastor [REDACTED] and a variety of financial documents that fail to reflect the salary supposedly paid to the beneficiary since April 1998. Even if the petitioner had proven that the above checks were indeed presented for payment, that would only show that the petitioner began paying the beneficiary, after the appeal had already been filed, in an effort to establish a "pattern of payment."

Furthermore, even if copies of the older checks are unavailable as claimed, the issuing bank would still presumably have records showing that the checks had been written and cashed during that time. The petitioner submits nothing from the issuing bank to establish that the bank's records from 1999 onward were destroyed or otherwise unavailable as of late 2002. As noted above, the newly-written checks, which counsel states establish "a pattern of payment," are dated in one-week intervals. We cannot accept that all records of over 150 checks written from April 1998 onward would have disappeared not only from the church's own archives but also from the issuing bank. Especially in the face of other inconsistencies described above, we find counsel's unsupported claim on appeal to be highly implausible and thus profoundly lacking in credibility.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). In this instance, each new submission of evidence has served only to raise even more questions.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.